IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NOS. 26875 OF 2003 AND 4410 OF 2004

WRIT PETITION NO : 26875 of 2003

Between:

1 Challappli Ravi, S/o Tagore,
General No. 8644, Revendrapadu Post, Duggirala Mandal,
Guntur District.
2 Kesaraneni Narasimha Rao, S/o Lakshmaiah,
General No. 4501, Revendrapadu Post, Duggirala Mandal,
Guntur District.
3 Challapalli Tagore, S/o Adaiah,
General No. 4114, Revendrapadu Post, Duggirala Mandal,
Guntur District.
4 Lankapothu Bala Koti Reddy, S/o.Basava Punna Reddy.
5 Lankapothu Pitchi Reddy, S/o.Venkatappa Reddy.
6 Poluru Pothi Reddy, S/o.Raghava Reddy.
7 Marth Narayana, S/o.Venkata Sivudu,
8 Maddala Rama Mohana Rao, S/o.Seshagiri Rao.
(Petitioners 4 to 8 are R/o.Mamillapally Village, Ponnur
Mandal, Guntur District.)
(PETITIONERS 4 TO 8 ARE IMPLEADED AS PER COURT
ORDER DT.13-2-2004 IN WPMP NO. 2010/2004)

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary, Industries & Commerce (Sugar) Department, Secretariat, Hyderabad.
2 Principal Secretary to Government, Public Enterprises Reforms, A.P. Secretariat, Hyderabad.
3 Director of Sugars cum Cane Commissioner and Registrar of Co-op Sugar Factories, Shekkar Bhavan, Basheerbagh, Hyderabad.
4 N.V.R. Cooperative Sugars Limited, Jampani, rep. by its Vice Chairman, S/o Venkata Subbaiah,, aged 56 yrs,

Suggunalanka, Kolluru Mandalam, Guntur District.

5 Krebs Biochemicals Limited, C/o Implementation Secretariat, Secretariat, Hyderabad.
(Respondent No.5 is added as per oral directions of the Hon'ble Court dated 8.1.2004).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Direction or order, more particularly one in the nature of Writ of Mandamus declaring--- i) Section 12-A of the A.P.C.S. Act, 1964 as inserted by A.P. Act, 22 of 1996 and the Rules and Notification issued thereunder as illegal, arbitrary, void as being violative of Articles 14, 19 ,21, 31-A and 300-A of the Constitution of India and also ultravires the legislative power of the State. ii) To declare the action of the respondents in imposing the state advisory price over and above the statutory minimum price fixed by the Government of India under Clause 3 of the Sugar Cane Control Order as illegal and ultravires and declare all the consequential proceedings like treating the amount paid under compulsion as financial aid and converting the same into equity as illegal, arbitrary, without any basis or jurisdiction and consequently direct the first respondent Government to make good all the loss caused to the Respondent Sugar Factory on account of the payment of differential cane price with interest amounting to Rs. 356.05 lakhs, after adjusting against Sugar Cane purchase Tax dues is any. iii) To declare the all action of the third respondent invoking Section 12-A of A.P.C.S. Act. 1964 against the fourth Respondent society including the order Rc.No. 10392/2003/94 dated 25-8-2003 of Article 14, 19, 21 and 300-A and also contrary to Section 12-A of A.P.C.S. Act, 1964, iv) to declare the action of the 3rd respondent in not converting the Respondent Sugar Factory under A.P.M.A.C.S. Act, 1995 as illegal and direct the third respondent to register the Respondent Sugar Factory under the said Act. v) to direct the respondents to take steps for immediate payment of all sugar cane arrears to the farmers including the petitioner after, after recovering the same from Jaipur Sugars Limited. vi) to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioners: Mr. M.V.DURGA PRASAD, Advocate.

For Respondent Nos. 1 to 4: Advocate General.

For Respondent No. 5: S. Niranjan Reddy, Advocate.

WRIT PETITION NO : 4410 of 2004

Between:

1 Bollu Satyanarayana, s/o Subbaiah,
r/o 31-1-4, Sultanabad, Near Govt.Hospital,
Tenali.
2 Sugguna Aadinarayana, s/o Venkata Subbaiah,
r/o Sugguna Lanka, Kollur.
3 Sugguna Lalitababu, s/o Sambaiah,
r/o Sugguna Lanka, Kollur.
4 Lankapotu Venkatappa Reddy, s/o Veeraraghava Reddy,
r/o Mamillapalli, Ponnur.
5 Bhavanam Srinivasa Reddy, s/o Nagireddy,
r/o Dandamudi, Ponnur.
6 Kodali Anjaneyulu, s/o Sambaiah,
r/o 5-23-53, J.P.Nagar, Tenali.

..... PETITIONER(S)

AND

1 Government of Andhra Pradesh, rep., by its Principal Secretary/Chairman, Public Enterprises Department Implementation Secretariat, Hyderabad.
2 Government of Andhra Pradesh, rep., by its Principal Secretary, Industries & Commerce Department, Secretariat, Hyderabad.
3 Government of Andhra Pradesh, rep., by its Principal Secretary, Agriculture & Cooperative Department, Secretariat, Hyderabad.
4 Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Gruhakalpa, Nampally, Hyderabad.
5 Commissioner & Director of Sugar and Cane Commissioner/Registrar of Co-operative Societies, Chirag Ali Lane, Hyderabad.
6 The NVR Cooperative Sugar Factory Ltd., rep., by its Managing Director, Jampani, Guntur District.
7 M/s.Krebs Biochemicals Ltd., rep., by its Managing Director, having its Regd.Office at 401 & 402, Cyber Heights, 4th Floor, Plot No.13, Road No.2, Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of writ of mandamus declaring i) the Section 12-A of A.P.Co.operative Societies Act 7 of 1964 as substituted by A.P.Ordinance No.4 of 2003 published in A.P.Gazette as No.16 dated 2-8-2003 as patently arbitrary,

illegal, without application of mind contrary to the very scheme and objectives of the said act, besides hitting Article 14 of Constitution of India and consequently strike down the same. ii) The action of the 5th respondent i.e., Registrar of Cooperative Societies/Commissioner & Director of Sugars and Cane Commissioner, A.P.Hyderabad, in putting for sale of the assets of the Nannapaneni Venkatrao Cooperative Sugar Factory Ltd., Jampani, Guntur District i.e., the 6th respondent herein and fixing the date of closure for receipt of bids on 20-10-2003 as per cryptic paper publication on 05-10-03 in Eenadu Daily news paper as without jurisdiction and considering the bid of R7 at lower offer then the earlier bids is illegal, arbitrary, without power of authority, weight of evidence and probabilities of the case without application of independent mind besides being violative of Section 3, Section 12-A, Section 64 to 69-A, Section 129, Section 130 & Section 133 among others of the A.P.Cooperative Societies Act 7 of 1964, and hence liable to be set aside and consequently continue the 6th respondent factory under cooperative sector and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case. iii) The part of the A.P.Gazette No.249, dated 31-12-03 pertaining to respondent No.6 in Rc.No.10392/2003/G4, dated 16-12-2003 as unconstitutional.

For the Petitioners : Mr. K.S.MURTHY, Advocate.

For Respondents Nos. 1 to 6: Advocate General.

For Respondent No. 7: Mr. S. Niranjan Reddy, Advocate.

The Court made the following Common Order: (per Sri BRSR,J)

There is no dispute whatsoever that the subject matter that arises for consideration in these writ petitions is squarely covered by the judgment rendered by this Court in **G.V. Jayachandra Chowdary v. Government of A.P**[1]. This Court after an elaborate consideration of the matter disposed of the writ petitions in the following manner:

> "In the result, we:
>
> (a) uphold the constitutional validity of Section 12-A(1), (2) and (9) to (13) and explanations, except explanation (h), which defines the 'best offer';
>
> (b) strike down explanation (h), which defines 'best offer', as unconstitutional being violative of Article 14 of the Constitution of India;
>
> (c) do not find any constitutional infirmity in sub-sections

(3) to (8) of Section 12-A of the Act, but the concept of 'best offer' as defined in explanation (h) runs through the said provisions and or so inextricably bound up those forming an integral part of the said sub-sections and, therefore, we find it difficult to apply the 'doctrine of severability' and save them. Therefore, sub-sections (3) to (8) are also struck down as unconstitutional being violative of Article 14 of the Constitution of India;

(d) uphold the decision of the Registrar taken under Section 12-A(1) of the Act alone; and

(e) other consequential decisions are declared void in view of striking down of explanation 'h' and as well as sub-sections (3) to (8) of Section 12-A of this Act".

Following the said judgment and the law declared by this Court, these writ petitions are also disposed of in terms of the said judgment.

The learned Advocate General appearing on behalf of the State and Sri S. Niranjan Reddy, learned counsel for the unofficial respondent herein however prayed the Court to suspend the operation of the judgment in order to enable the parties to approach the apex Court by way of special leave petitions. It is brought to out notice that during the course of pendency of batch of writ petitions filed challenging the constitutional validity of the provisions of Section 12-A of the Andhra Pradesh Cooperative Societies Act, 1964, the unofficial respondent had entered into sale and purchase agreement and even the possession of the factory and machinery was delivered on 4.1.2004 and therefore, some breathing time may be granted enabling the 5th respondent to approach the apex Court.

There is some controversy as to whether the possession of the factory at all was delivered on 4.1.2004. The learned counsel appearing on behalf of the writ petitioners have placed copies of various proceedings in support of their submission that even the official respondents have colluded with the 5th respondent in the manner contrary to the interim order passed by this Court on 8.1.2004 directing the parties to maintain

status quo. We are not inclined to express any opinion on the allegation of manipulation of records etc., but find some basis for making such an allegation.

In the circumstances, we are not inclined to grant any interim order keeping the judgment in abeyance. The request made in this regard is accordingly rejected.

(B. Sudershan Reddy, J)

29..06..2004

(Ghulam Mohammed, J)

ks

Note: Furnish copy of the Order by tomorrow.

B/O

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 Principal Secretary, Government of Andhra Pradesh, Industries & Commerce (Sugar) Department, Secretariat, Hyderabad.
2 Principal Secretary to Government, Public Enterprises Reforms, A.P. Secretariat, Hyderabad.
3 Director of Sugars cum Cane Commissioner and Registrar of Co-op Sugar Factories, Shekkar Bhavan, Basheerbagh, Hyderabad.
4 Principal Secretary/Chairman, Government of Andhra Pradesh, Public Enterprises Department Implementation Secretariat, Hyderabad.
5 Principal Secretary, Government of Andhra Pradesh, Industries & Commerce Department, Secretariat, Hyderabad.
6 Principal Secretary, Government of Andhra Pradesh, Agriculture & Cooperative Department, Secretariat, Hyderabad.
7 Commissioner for Cooperation and Registrar of Cooperative

Societies, Andhra Pradesh, Gruhakalpa, Nampally, Hyderabad.

8 Commissioner & Director of Sugar and Cane Commissioner/Registrar of Co-operative Societies, Chirag Ali Lane, Hyderabad.

9 2 CCs to the Advocate General, High Court of Andhra Pradesh, Hyderabad.

10 2 CD copies.

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[1] 2004 (3) ALD 474 (DB)